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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,471	09/25/2003	Kouji Yokouchi	2091-0292P	4852
2292 7590 04/12/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER EHICHIOYA, FRED I	
			ART UNIT	PAPER NUMBER
			2162	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/12/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/12/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Office Action Summary**

Application No.

10/669,471

Applicant(s)

YOKOUCHI, KOUJI

Examiner

Fred I. Ehichioya

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action is responsive to communications filed September 25, 2003.
2. Claims 1 – 18 are pending in this Office Action.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7 - 18 are rejected under 35 U.S.C. 101 because:

- (i) Claim 7 is directed to program per se. When the computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized (MPEP 2106.01 [R-5] (I)). Merely amending the claim(s) to supply an appropriate medium is insufficient under USPTO policy to provide a fully patent-eligible claim under 35 USC 101

The claimed invention does not accomplish a “practical application” as forth in MPEP 2106 (II) (A).

Regarding claims 8 - 12 and in view of MPEP 2106 (II) (A), are not statutory because they recite computing steps and are merely descriptive and lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning

of 35 USC 101. The claims do not accomplish a "practical application" as forth in MPEP 2106 (II) (A); therefore non-statutory.

(ii) Regarding claim 13, this claim is directed to computer readable recording medium. Applicant discloses in the specification page 26, lines 15 – 21 that computer readable media are Internet downloads in which instructions can be transmitted through network or wireless transmissions. This claim is non-statutory since they are carrier wave signal. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. MPEP 2106.01[R-5].

The claimed invention does not accomplish a "practical application" as forth in MPEP 2106 (II) (A).

Regarding claims 14 - 18, and in view of MPEP 2106 (II) (A), are not statutory because they recite computing steps and are merely descriptive and lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. The claims do not accomplish a "practical application" as forth in MPEP 2106 (II) (A); therefore non-statutory.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2001/0022624 issued to Tanaka et al., (hereinafter “Tanaka”) in view of U.S. Pub. No. 2003/0018802 issued to Romanik et al., (Hereinafter “Romanik”).

Regarding claims (1, 7 and 13)\*<sup>1</sup>, Tanaka discloses an image classification apparatus for classifying image data sets added with accompanying information including information items, the image classification apparatus comprising:

accompanying information obtaining means for obtaining the accompanying information from the image data sets (see page 5, [0016] wherein a method of obtaining image information is disclosed); and

image classification means for classifying the image data groups having a hierarchical structure of the information items according to the specified sets into specified priority (see page 7, [0091] and Fig.10 wherein image classification based on tree structure is disclosed).

Tanaka does not explicitly teach specification of image as claimed.

However, Romanik discloses information item specification means for specifying a portion of or all of the information items of the accompanying information to be used

for image classification, and for specifying priority among the specified information items (see page 5, [0042] wherein the image can also be divided into multiple windows to specify those regions that contain desired information).

It would have been obvious to one of ordinary skills at the data processing art at the time of present invention to combine the cited references, because Romanik's teaching of specification information regarding image would have allowed Tanaka's system to classify images into different classes. These classes simplify the searching or locating a particular image.

**\*1 in the above claims, claim 1 is an apparatus, claim 7 is a program claim and claim 13 is a computer readable medium claim otherwise they essentially have the same claim limitations.**

Regarding claims 2, 8 and 14, Romanik discloses the image classification apparatus according to Claim 1, wherein the accompanying information includes classification condition information representing a set of the information items to be used for image classification (see page 3, [0026] wherein There are many conditions under which image 305 must be put into queue) and

the information item specification means specifies the information items to be used for image classification according to the classification condition information (see page 2, [0023] wherein it accepts the image along with an operation to specify additional attributes. These attributes can include, but are not limited to, specifying what forms of processing the client transfer mechanism can apply to the image).

Regarding claims 3, 9 and 15, Tanaka discloses the image classification apparatus according to Claim 2, wherein the accompanying information includes at least one of items comprising time and date of photography, a photography condition, a photography location, a size of an image, the type of a subject, the name of the subject, the number of objects as the subject, an event, and a comment, as the information items thereof (see Fig. 1 step 16).

Regarding claims 4, 10 and 16, Tanaka discloses the image classification apparatus according to Claim 1, wherein the accompanying information includes classification condition information representing a combination of the information items to be used for image classification and the priority thereof (see Fig.8 where the image could be classify either by title, white balance or date), and

the information item specification means specifies the information items to be used for image classification and the priority thereof, according to the classification condition information (see page 8, [0103] wherein a priority is disclosed).

Regarding claims 5, 11 and 17, Tanaka discloses the image classification apparatus according to Claim 4, wherein the accompanying information includes at least one of items comprising time and date of photography, a photography condition, a photography location, a size of an image, the type of a subject, the name of the subject, the number of objects as the subject, an event, and a comment, as the information items thereof (see Fig. 1 step 16).

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Regarding claims 6, 12 and 18, Tanaka discloses the image classification apparatus according to Claim 1, wherein the accompanying information includes at least one of items comprising time and date of photography, a photography condition, a photography location, a size of an image, the type of a subject, the name of the subject, the number of objects condition, a photography location, a size of an image, the type of a subject, the name of the subject, the number of objects as the subject, an event, and a comment, as the information items thereof (see Fig. 1 step 16).



**Conclusion**

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred I. Ehichioya whose telephone number is 571-272-4034. The examiner can normally be reached on M - F 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fred I. Ehichioya  
Patent Examiner  
Art Unit 2162



April 2, 2007